

**ALERTS**

## **New York Adopts Child Victims Act Extending and Reviving Statute of Limitations for Abuse Claims**

**February 14, 2019**

On Feb. 14, 2019, Governor Cuomo signed the Child Victims Act into law, extending the statute of limitations in both criminal and civil actions alleging child sexual abuse.[1] The legislation passed the New York Senate and Assembly in January with overwhelming support.[2]

Importantly, the new law does not only apply to future acts of child sexual abuse. The law has the effect of reviving, in certain instances, civil claims for past abuse that were otherwise barred by the statute of limitations. Under the legislation, such civil claims may now be brought against both abusers and others whose intentional or negligent acts render them responsible for the victim's injuries.

### **New Statute of Limitations for Criminal Charges**

Generally under New York law, a felony prosecution must be commenced within five years of the criminal act and misdemeanor prosecutions must be commenced within two years.[3] Prior to the Child Victims Act, these criminal statutes of limitation were tolled in child sexual abuse cases until the victim reached the age of 18 or the offense was reported to law enforcement or the statewide child abuse registry, whichever occurred earlier.[4] Thus (assuming that the offense was not reported), a felony prosecution would be timely if it was brought before the victim turned 23 and a misdemeanor prosecution would be timely if brought before the victim's 20th birthday.

Under the new legislation, the criminal statutes of limitation are tolled until the victim reaches the age of 23 (or the offense is reported). A prosecution may now be brought prior to the victim's 28th birthday (in the case of a felony charge) or the victim's 25th birthday (in the case of a misdemeanor charge).[5]

## **New Statute of Limitations for Civil Causes of Action**

Previously under New York law, victims of child sexual abuse had, in comparison to the laws of other states, a relatively short window of time to file a civil lawsuit. The statute of limitations was tolled until the victim turned 18, the age of majority, but depending on the nature of the abuse, the victim was required to bring his or her claim within one year, three years or at most five years after he or she attained the age of majority.[6]

Under the Child Victims Act, a child abuse victim can now sue at any time before he or she turns 55 years old, provided that he or she was younger than 18 when the conduct took place and that the conduct constitutes a sexual offense as defined in Article 130 of the New York Penal Law (which covers a variety of forms of sexual abuse and misconduct), incest as defined in the Penal Law, or the use of a child in a sexual performance as defined in the Penal Law.[7] According to the Act's legislative history, it takes most victims many years to come to terms with their abuse and it has been estimated that the average age for a victim to report such abuse is 52.[8]

The new statute of limitations allows civil claims to be brought "by any person for physical, psychological or other injury or condition suffered by such person" as a result of a covered act of child sexual abuse "against any party whose intentional or negligent acts or omissions are alleged to have resulted in the commission of said conduct." [9] Thus, the limitations period has been extended not only with respect to claims against the alleged abuser, but also with respect to claims against third parties whose intentional or negligent conduct allegedly resulted in the abuse.

The law also provides that such claims may be brought irrespective of any provision of law that would otherwise require the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to suit, as is the case for claims against public entities.[10]

# Revival of Otherwise Lapsed Civil Causes of Action

In addition to extending the civil statute of limitations, the new legislation creates a special “one-year window” — starting six months from the effective date of the bill — in which victims will be allowed to commence a lawsuit asserting an otherwise time-barred claim for child sexual abuse. Such causes of action are “hereby revived,” according to the statute, notwithstanding that they were previously barred because the statute of limitations had expired. Indeed, under the statute, even an action that had previously been brought and dismissed on statute of limitations grounds may be resurrected during the one-year window.[11]

The scope of the revival provision mirrors that of the new statute of limitations for civil claims — it revives claims against “any party” alleging “intentional or negligent acts or omissions” for “physical, psychological or other injury or condition suffered as a result of conduct” that would constitute a sexual offense under Article 130 of the Penal Law or incest or the use of a child in a sexual performance under the Penal Law. An action asserting such a claim may be commenced no earlier than six months after the law’s effective date — i.e., Aug. 14, 2019 — and no later than one year and six months after the effective date — i.e., Aug. 14, 2020.

## Constitutional Implications

Constitutional principles may limit the retroactive application of the Child Victims Act. In criminal cases, the Supreme Court has held that a law extending the statute of limitations violates the Ex Post Facto Clause of the United States Constitution if it is applied to revive an otherwise time-barred prosecution.[12] Accordingly, the longer limitations period for criminal cases set forth in the Child Victims Act will not have retroactive application to past acts of child sexual abuse that occurred prior to the limitations period under prior law.

Constitutional challenges have also been brought to the retroactive application of new statutes of limitations in civil cases. In general, legislation reviving the statute of limitations on civil claims has been held not to violate the Ex Post Facto Clause or other federal constitutional guarantees, unless the legislation can be deemed punitive in nature. However, state courts have reached different results as to whether such legislation runs afoul of state constitutional requirements.[13] An analysis

of New York's jurisprudence in this area, as applied to the Child Victims Act, is beyond the scope of this *Alert*.

A separate constitutional issue is raised by the provision of the Child Victims Act that revives claims that were previously brought and dismissed. At least one court has held, in a state where retroactive application of a new statute of limitations to civil claims for child sexual abuse was held to be permissible, that the law nonetheless could not constitutionally be applied to revive a claim that had previously been dismissed as time-barred. The court reasoned that the legislature's enactment of a law to undo a final judgment entered by a court violated the constitutional principle of separation of powers.[14]

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] The text of the Child Victims Act may be found here.

[2] Vivian Wang, "They Were Sexually Abused Long Ago as Children. Now They Can Sue in N.Y.," *The New York Times*, Jan. 28, 2019, available here.

[3] N.Y. Crim. Proc. Law § 30.10(2)(b) – (c) (McKinney).

[4] *See id.* § 30.10(3)(f).

[5] N.Y. S.B. 2440, § 1(f), 242 Legis. Sess. (N.Y. 2019).

[6] N.Y. C.P.L.R. §§ 208, 213-c, 215(3) (McKinney).

[7] N.Y. S.B. 2440 § 2(b), 242 Legis. Sess. (N.Y. 2019).

[8] N.Y. Committee Report, S.B. 2440, 242 Legis. Sess. (N.Y. 2019); *see* Child USA, *Child Sex Abuse Statutes of Limitation*, available here.

[9] N.Y. S.B. 2440 § 2(b), 242 Legis. Sess. (N.Y. 2019).

[10] N.Y. S.B. 2440 § 2(b), 214-g, 242 Legis. Sess. (N.Y. 2019).

[11] *See* N.Y. S.B. 2440 § 214(g), 242 Legis. Sess. (N.Y. 2019) (victims will also be able to file claims even if they failed to file a notice of claim or a notice

of intention to file a claim); *see also Senate Majority Stands Up For Survivors, Passes Child Victims Act*, (Jan. 28, 2019), available here.

[12] *Stogner v. California*, 539 U.S. 607 (1990).

[13] *See Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 119 A.3d 462 (2015) (discussing case law).

[14] *Perez v. Roe I*, 146 Cal. App. 4th 171, 52 Cal. Rptr. 3d 762 (Cal. Ct. App. 2006).

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